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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF POCATELLO, CITY OF IDAHO
FALLS, CITY OF BLISS, CITY OF BURLEY,
CITY OF CAREY, CITY OF DECLO, CITY
OF DIETRICH, CITY OF GOODING, CITY
OF HAZELTON, CITY OF HEYBURN, CITY
OF JEROME, CITY OF PAUL, CITY OF
RICHFIELD, CITY OF RUPERT, CITY OF
SHOSHONE, CITY OF WENDELL, and
MCCAIN FOODS USA, INC.,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in his
capacity as Director of the Idaho Department of
Water Resources,

Respondents.

CV01-23-08306

Case No. _____

IDWR Docket No. CM-DC-2010-001

**PETITIONERS' MOTION FOR STAY
BASED ON IDWR'S INTERFERENCE
WITH LAWFUL DISCOVERY**

IN THE MATTER OF THE DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY AND FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN FALLS
RESERVOIR DISTRICT #2, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, AND TWIN FALLS
CANAL COMPANY

Petitioners, the Cities of Idaho Falls, Pocatello, Jerome, Burley, Bliss, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Paul, Richfield, Rupert, Shoshone, and Wendell; and McCain Foods USA, Inc. (collectively, the “Petitioners”), by and through their respective counsel, hereby move the Court pursuant to Idaho Code § 67-5274 and Rule 84(m) of the Idaho Rule of Civil Procedure to stay the hearing set for June 6-10, 2023, in IDWR Docket No. CM-DC-2010-001, until this Court rules on the *Petition for Judicial Review of May 5, 2023 Discovery Order* (“Petition”) filed herewith. The *Petition* seeks a ruling from this Court that the Idaho Department of Water Resources’ (“Department” or “IDWR”) assertion of a “deliberative process” privilege in the context of the Director’s *Order Denying Appointment of Independent Hearing Officer and Motion for Continuance and Limiting Scope of Depositions* (“Discovery Order”), and Department counsel’s invocation of the alleged privilege during depositions of Department staff, is inconsistent with Idaho law. The Department’s interference with discovery in this manner has prevented Petitioners from conducting investigations related to relevant information in the above-captioned proceeding. As a matter of law, the “deliberative process” privilege is not available as a defense to disclosure or discovery in the State of Idaho, and the Department cannot use it as a shield to prevent discovery of relevant information. This motion is

supported by *Petitioners' Memorandum in Support of Motion for Stay Based on IDWR's Interference with Discovery* filed herewith.

DATED this 22nd day of May, 2023.

<p>SOMACH SIMMONS & DUNN</p> <p>By <u> /s/ Maximilian C. Bricker </u> Maximilian C. Bricker (ISB #12283) Sarah A. Klahn (ISB #7928)</p> <p><i>Attorneys for City of Pocatello</i></p>	<p>MCHUGH BROMLEY, PLLC</p> <p>By <u> /s/ Candice M. McHugh </u> Candice M. McHugh (ISB# 5908) Chris M. Bromley (ISB # 6530)</p> <p><i>Attorneys for the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell, and McCain Foods USA, Inc.</i></p>
<p>HOLDEN KIDWELL HAHN & CRAPO</p> <p>By <u> /s/ Robert L. Harris </u> Robert L. Harris (ISB# 7018)</p> <p><i>Attorneys for City of Idaho Falls</i></p>	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2023, I caused to be filed a true and correct copy of the foregoing document via iCourt E-File and Serve, and upon such filing, the following parties were served via electronic mail:

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